OFFER OF POLITICAL CONTRIBUTION FOR INDIVIDUAL'S INFLUENCE IN PROCURRING FEDERAL JOB HELD CRIMINAL

United States v. Shirey,
359 U.S. 255 (1959)

An information charging George Shirey with offering one thousand dollars a year to a political party in exchange for the promise of a congressman's influence in procuring for him the position of postmaster was dismissed in the district court[1] as failing to allege a charge covered by 18 U.S.C. § 214.[2] On direct appeal the United States Supreme Court reversed,[3] the majority holding that either of two alternative constructions of the statute sustain the information as alleging an offense: (1) the person promising political influence need not be the recipient of the money and (2) a political party is a "person" for purposes of the statute.

In the first interpretation of this statue since its original enactment the instant case raises the question of the choice between competing canons of statutory construction, *i.e.* strict construction of a penal statute as opposed to the plain meaning rule. Although Justice Frankfurter for the majority considers the possibility of interpreting the statute to mean that the person using his influence need not be the recipient of the money,[4] his opinion is based primarily on the finding that a political party is within the "plain meaning" of the word "person" as set forth in the statute. This is supported by reference to the legislative history of the statute.[5]

The minority opinion by Mr. Justice Harlan begins with the assumption that whether or not a political party is a "person" is essentially ambiguous, thus requiring a strict construction of the statute.[6] This pointed out

[1] United States v. Shirey, 168 F. Supp. 382 (N. D. Pa. 1958).

[2] "Whoever pays or offers to pay or promises any money or thing of value, to any person, firm or corporation in consideration of the use or promise to use influence to procure any appointive office or place under the United States for any person, shall be fined not more than $1000 or imprisoned not more than one year or both."

[3] United States v. Shirey, 359 U.S. 255 (1959).

[4] *Ibid* at 257. *E.g.,* Public official X promises to use his influence to procure a job for Y (payor) in return for Y's paying money to a political party Z (payee).

[5] Representative Stevenson, who sponsored the original bill entitled, "A statute designated to punish the purchase and sale of public office," which became 44 Stat. 918 (1926) and which is presently § 214 and 215, 18 U.S.C., was asked by Representative Sherwood, "Where did the money finally find its home?" To which Mr. Stevenson replied, "I do not know. As I have said here once before, I doubt if much of it goes into his pocket (referring to a Mr. Talbert, a political figure in South Carolina, whom Stevenson accused of selling appointive offices) and the pockets of his machine or it goes into the coffers of the Republican party. If it does, it is the most blatant defiance of the civil service laws that any party has ever had the hardihood to put over, and it is disgraceful as the Teapot Dome proposition any day." 65 Cong. Rec. 1410 (1926).

[6] "[W]ith proper regard for the principle that an essentially ambiguous crimi-

that § 2 of the original "Purchase and Sale of Public Offices Act" provided that the "payee" must be the party exerting the influence.[7] Using the revisor's notes,[8] the minority conclude that the exclusion of the word "payee" in the re-enactment, which is now 18 U.S.C. § 215, was intended only as rephrasing and not a substantive change.[9] Thus, reading § 214 in conjunction with § 215, § 214 likewise requires the person exerting the influence to be the one receiving the contribution.

As to this proposition, it seems highly probable that the majority, relying on the purpose and the legislative history, would still read the statute as not requiring the "payee" be the person exerting the influence.[10] This would appear to be the result even if the word "payee" had been retained in the re-enactment.

The ultimate question would seem to be whether Shirey should have known he was violating a statute by offering money to a political party in return for the influence of a public official. While a statute requiring or forbidding the doing of an act in terms so vague that men of common intelligence must necessarily guess as to its meaning and differ as to its application, violates the first essential of due process of law;[11] this does not mean that an impossibly precise standard must be used.[12] All that is required is that the language convey a sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices.[13] Since the title and wording of the statute clearly indicate the

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nal statute is to be strictly construed, I cannot agree that this information states an offense under § 214." 359 U.S. 255, at 264.

[7] "It shall be unlawful to solicit or receive from anyone whatsoever, either as a political contribution or for personal emolument, any sum of money or thing of value, whatsoever, or use of influence, *or for the support of influence of the payee,* in behalf of the person paying the money or any other person, in obtaining any appointive office under the Government of the United States." 44 Stat. 918 (1926) (emphasis added).

[8] The Reviser's Note refers expressly to other substantive changes made in the section at the time of the codification, and appears to class the omission of the "payee" language under "change of style." 359 U.S. 255, at 267 n. 5.

[9] 18 U.S.C. § 215, reads as follows: "Whoever solicits or receives, either as a political contribution, or for personal emolument, any money or thing of value, in consideration of the promise of support or use of influence in obtaining for any person any appointive office or place under the United States, shall be fined not more than $1000 or imprisoned not more than one year, or both."

[10] See note 5, *supra.*

[11] Connally v. General Construction Co., 269 U.S. 391 (1926). See also, Bell v. United States, 349 U.S. 81, 83 (1955), "[W]hen Congress leaves to the Judiciary the task of imputing to Congress an undeclared will, the ambiguity should be resolved in favor of lenity."

[12] In an analogous situation the Supreme Court in, United States v. Hood, 343 U.S. 148 (1952), referring to 18 U.S.C. § 215 (See note 9, *supra*) held that payment of money for the procurement of an office not yet in existence was within the evil at which the statute was directed.

[13] United States v. Petrillo, 332 U.S. 7 (1946). See also United States v. Brown, 333 U.S. 25 (1948), "Strict construction is not an inexorable command to

sale of public offices as the proscribed evil, it is difficult to discern any reasonable basis for excluding the situation presented by this case.[14]

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override common sense and evident statutory purposes."

[14] The original bill sponsored by Representative Stevenson was entitled, "A statute designed to punish the purchase and sale of public offices." The legislative history found in footnote 5 also indicates that the facts presented by this case were intended to be covered by the statute.